Supreme Court of the United States

OCTOBER TERM 1942

No. 551

IN THE MATTER

OF

JOHN M. RUSSELL, INC., Bankrupt.

ALLAN D. EMIL, as Trustee in Bankruptcy of John M. Russell, Inc.,

Appellant,

vs.

HARRY HANLEY, Receiver,

Appellee.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR APPELLEE

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Opinions Below

The opinion of the District Court is reported in 43 Fed. Supp. 128 (R. 14, 15). The opinion of the Circuit Court of Appeals is reported in 130 Fed. (2d) 369 (R. 17-31).

Jurisdiction

Petitioner invokes the jurisdiction of this Court under Section 240a of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A., Sec. 347a).

Statement

The appellee was receiver of rents and profits in an action brought in the New York State Supreme Court to foreclose a mortgage on property of the bankrupt. The appellant, trustee in bankruptcy, applied to the United States District Court for the Eastern District of New York for an order to compel the appellee as such receiver to file his account in the bankruptcy court. The District Court denied the motion, the Circuit Court of Appeals affirmed by a two to one decision and this Court granted certiorari.

Facts

On or about August 13, 1940, an action was commenced in the Supreme Court of the State of New York, Nassau County, to foreclose a third mortgage in the sum of $16,900 on a three-story, forty-five family apartment building located at Great Neck, New York. Thereafter, on August 17, 1940, an order was made by a Justice of the Supreme Court of the State of New York appointing Harry Hanley the Receiver of the rents and profits of the real property under foreclosure. The title to this real property was in the name of John M. Russell, Inc., the bankrupt. Immediately following his appointment on August 17, 1940, the Receiver, Harry Hanley, duly qualified by filing a bond in the sum of $12,000 and actually went into possession of the mortgaged premises, and was in possession and control thereof on August 31, 1940, when the petition in bankruptcy of John M. Russell, Inc., was filed (R. 5, 6).

While the said foreclosure action covering the third mortgage of $16,900 was pending, another foreclosure action was brought to completion in the State Court by a mechanic's lienor, or lienors, who were not paid for work they had done and materials they had furnished in the construction of the building and who had filed liens which were subordinate to the third mortgage. The record does not indicate when this mechanic's lien foreclosure was commenced and whether the jurisdiction of the State Court attached prior to or subsequent to the filing of the bankruptcy petition. At any rate, a judgment of foreclosure and sale was granted and a sale of the premises actually took place on February 21, 1941, at which time the premises were sold at public auction to Apartment Investing Corporation for $20,000 (R. 6).

As a result of the said sale the title of the trustee in bankruptcy to the equity, if any, in the said real estate was extinguished. Likewise, any claim which the Trustee had to any surplus rents collected by the Receiver, over and above expenses and prior claims, was terminated as of February 21, 1941.

The third mortgage foreclosure action in which Hanley was the Receiver, was continued following the said sale and a judgment was entered on June 13, 1941. The property was advertised for sale pursuant to such judgment but before the sale was actually held the judgment was paid and satisfied on August 13, 1941. Promptly thereafter the appellee presented his account to the State Court and petitioned for the settlement thereof and for his discharge as Receiver (R. 7).

It should be noted that although the receivership ran from August, 1940, to August, 1941, the real property was owned by three different owners during that period, i.e., John M. Russell, Inc., from August 17, 1940, until the filing of the bankrupt's petition on August 31, 1940; the trustee in bankruptcy up to February 21, 1941, and Apartment Investing Corporation from February 21, 1941, until the termination of the receivership. Upon the settlement of

the Receiver's account the State Court had before it not merely the question of the accuracy of the receipts, propriety of disbursements, and the question of compensation for the Receiver and his attorney, but also the Court was called upon to apportion the net rents, if any, so that the trustee in bankruptcy would receive only those net rents allocable to the period up to February 21, 1941, and the Apartment Investing Corporation would receive the net rents which accrued subsequent to February 21, 1941.

The papers had already been served in connection with the Receiver's application to the State Court for settlement of his account when the trustee in bankruptcy made the application to the District Court for an order directing the Receiver to file his account in that court (R. 12).

The District Court seemed inclined to permit the State Court to retain jurisdiction and made no order in the matter while the accounting was being heard by the State Court. Meanwhile the appellant went into the State Court and filed objections to the Receiver's account. An official referee of the State Court was designated to hear and determine the account and to pass upon the objections. After a trial of the issues the official referee overruled the objections and determined the account (R. 12, 13). After a complete disposition of the account in the State Court the United States District Court Judge requested the parties to submit further affidavits as to what had transpired in the State Court and in compliance with such request the affidavits appearing at pages 9 and 12 of the record were submitted. Thereupon the District Court Judge gave his assent to the action of the State Court and denied the motion of the trustee in bankruptcy (R. 15).

In the statement of the case set forth in appellant's brief (p. 3) it is stated that although the Receiver was appointed on August 17, 1940, his accounting shows that he did not collect any rents from the property until after September 1, 1940. From this statement the appellant argues that the Receiver did not collect any rent until after the bankruptcy. The record does not sustain this assertion.

It appears (R. 6) that the Receiver actually collected rents during the month of August, 1940. This was a new building. When the Receiver took possession in August, 1940, he began to make leases forthwith. Such leases called for rentals to start September 1, 1940, or thereafter, but leases were executed in August, 1940, and the first rent payments were made upon execution.

Statement of Points

POINT I—The State Court retained jurisdiction of the foreclosure action notwithstanding the bankruptcy, and the State Court Receiver was not displaced or superseded by the trustee in bankruptcy.

POINT II—The provisions of the Bankruptcy Act, Sections 2a21 and 69d, have no application to a receiver not displaced or superseded by the bankruptcy.

POINT III—The Bankruptcy Court had power to assent to the settlement of the Receiver's accounts by the State Court.

POINT I

The State Court retained jurisdiction of the foreclosure action notwithstanding the bankruptcy, and the State Court Receiver was not displaced or superseded by the trustee in bankruptcy.

Before considering the effect of the amendments to the Bankruptcy Act set forth in Sections 2a21 and 69d, it seems advisable to establish in our minds what the law was before these amendments were enacted. When we have done this we shall then consider to what extent these amendments changed the existing law.

The appellant has argued that even before the amendments the Bankruptcy Court could compel a State Court

Receiver to account to it. Sections 2a21 and 69d, he contends, merely make statutory the established "case-law" (Appellant's Brief, p. 14). Appellant justifies this contention upon the broad ground that the jurisdiction of the Bankruptcy Court is paramount and exclusive and hence that Court can make any direction to any Receiver irrespective of the source, manner or purpose of his appointment. To support this contention he relies upon *Taylor* v. *Sternberg*, 293 U. S. 470. He ignores completely *Stratton* v. *New*, 283 U. S. 318.

Stratton v. *New* (supra) recognizes a limitation upon the paramount and exclusive jurisdiction of the Bankruptcy Court which is controlling in this case. The question before this Court in that case was whether the Court of Bankruptcy had the power to enjoin a suit in the State Court to enforce a valid lien and sell the real estate subject thereto where such suit was commenced more than four months prior to the filing of the petition in bankruptcy. The Court stated (p. 321):

> "The filing of the petition is an assertion of jurisdiction with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate. This jurisdiction is exclusive within the field defined by the law, and is so far in rem that the estate is regarded as in custodia legis from the filing of the petition (Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300; 56 L. ed. 208, 32 S. Ct. 96). It follows that liens cannot thereafter be obtained nor proceedings be had in other courts to reach the property, the District Court having acquired the exclusive right to administer all property in the bankrupt's possession (citing cases). It may inquire into the validity of liens, marshal them, and control their enforcement and liquidation (citing cases).
>
> Though a lien be not discharged by bankruptcy, its owner may not, without the Bankruptcy Court's permission, institute proceedings in a State Court to enforce it, since his doing so might interfere with the orderly administration of the estate. Thus a mortgagee will be restrained from instituting or proceeding further in a foreclosure action, begun after the date

of the petition in bankruptcy, and a creditor holding a valid judgment more than four months old will be enjoined from enforcing its lien by suit brought after the date of the petition and his lien, created by judgment, entered within four months is voided. The Court of Bankruptcy has jurisdiction to administer the property regardless of the lien and will restrain the prosecution of that action to enforce it.

The Bankruptcy Law contains no express provision preserving liens acquired by local proceedings more than four months before the petition is filed, but it is clearly implied that they shall be saved from the operation of the law, for section 67f voids only liens obtained by local proceedings within that period. It has accordingly been held that those acquired earlier, if valid under state law, are preserved, and will be accorded priority by the Bankruptcy Court in the distribution of the estate, in accordance with applicable local law.

There is no dispute concerning these propositions. Appellants, however, assert that the jurisdiction in bankruptcy to ascertain, marshal and enforce liens, is not exclusive, but concurrent with that of other courts competent to that end, if the liens in question are not discharged but recognized as valid in bankruptcy, and that the rule of comity is applicable, that the court first lawfully taking jurisdiction shall retain it (Wabash R. Co. v. (323) Adelbert College, 208 U. S. 38; 52 L. ed. 379; 28 S. Ct. 182; Harken v. Brundage, 276 U. S. 36; 72 L. ed. 457; 48 S. Ct. 268). They contend that when the petition was filed in this case, the State Court was proceeding in a suit within its jurisdiction and had taken possession of the res for the purpose of enforcing such a lien. * * *

* * * * * * *

If appellants are correct in their contention that the creditor's suit was no more than a proceeding to enforce liens saved from discharge by the subsequent bankruptcy of the debtor, it follows, as they claim, that the District Court, sitting in bankruptcy, had no power to enjoin that action."

The Court then summarizes the cases of *Metcalfe Bros.* v. *Barker*, 187 U. S. 165, *Clarke* v. *Larremore*, 188 U. S.

486, and *Globe Banking Company* v. *Martin*, 236 U. S. 288, and continues at page 326:

> "Following these cases the Federal Courts have with unanimity held that where a judgment which constitutes a lien on the debtor's real estate is recovered more than four months prior to the filing of the petition, the Bankruptcy Court is without jurisdiction to enjoin the prosecution of the creditor's action instituted prior to the filing of a petition in bankruptcy to bring about a judicial sale of the real estate."

Page 327:

> "The trustee in bankruptcy may intervene in such suits to protect the interests of the estate.
>
> It is clear that if the action in the State Court was merely in the nature of an action or proceeding to obtain the avails of the judgment lien, it should not have been enjoined by the District Court."

The Court made reference to a statement in the opinion in *In re Watts*, 190 U. S. 1, in which the Court stated that the passage of the Bankruptcy Act did not in itself suspend the statute of Indiana in relation to the appointment of Receivers but merely that such Receivers were displaced by bankruptcy when the State proceeding took the form of a winding up of the affairs of the corporation. In commenting upon that statement in the opinion, this Court said:

> "This was merely a statement of the well settled principle that a general winding up receivership is tantamount to an insolvency proceeding which will be superseded by bankruptcy, and a fortiori, if, as in that case, the petition is filed within four months of the appointment of the Receiver. The language quoted from that case by appellee respecting the paramount and exclusive jurisdiction of the Court of Bankruptcy must be read in connection with the facts on which it is predicated.
>
> Most of the cases cited by the appellees to the effect that the initiation of bankruptcy proceedings confers on the District Court jurisdiction to enjoin pending

suits in State Courts deal with the situation where a lien was acquired within four months of the filing of the petition, or where after the filing of the petition an action was begun to enforce a lien valid in bankruptcy. As hereofore noted, there are a few cases which have held that the Bankruptcy Court may enjoin proceedings, brought prior to the filing of the petition, to enforce valid liens which are more than four months old at the date of bankruptcy; but these cases are contrary to the decisions of this court and to the great weight of Federal authority."

If we recognize the holding in *Stratton* v. *New* as a limitation upon the paramount and exclusive jurisdiction of the Bankruptcy Court, we then have no difficulty in concluding that prior to the amendments of the Bankruptcy Act set forth in Sections 2a21 and 69d, a Receiver of the rents and profits, appointed in a foreclosure action pending in a State Court, was not subject to the jurisdiction of the Bankruptcy Court unless the action was one which the Bankruptcy Court had the power to enjoin. Viewed in this light we can have no quarrel with appellant's Point I in which he states that the Receiver is the custodian of the res which is the subject of the litigation and as such he holds possession for the owner. The Receiver is the custodian of the property as an officer of the Court appointing him and is accountable to that Court alone.

Unless *Stratton* v. *New* and the great weight of Federal authority which it epitomizes are to be thrown completely into the discard, we do not see how it can be seriously contended that a Bankruptcy Court which cannot interfere with the jurisdiction of a State Court in a previously pending foreclosure suit can, nevertheless, subject to its orders, the Receiver who has custody of the res which the Bankruptcy Court has not the power to reach. The mere statement of the contention furnishes the answer to it.

We have then the proposition that *Stratton* v. *New* places a limitation upon the paramount and exclusive jurisdiction of the Bankruptcy Court. Taking *Taylor* v. *Sternberg* (supra) as authority for the broad rule of paramount and

exclusive jurisdiction, and *Stratton v. New* as authority for the limitation upon such jurisdiction, we are able to formulate a doctrine which should guide us in determining whether or not a Bankruptcy Court in a given case can reach and control the funds in the hands of a Receiver. That doctrine may be simply stated as follows: Where the bankruptcy supersedes the State Court proceeding, all authority for the continuance of the State Court proceeding comes to an end and the State Court Receiver becomes immediately accountable to the Bankruptcy Court. He must surrender to the Bankruptcy Court the property in his possession and such duty carries with it a right in the Bankruptcy Court to compel the Receiver to properly account to it for such property. Conversely, if the State Court is not superseded by the bankruptcy, no jurisdiction in the Bankruptcy Court attaches to the Receiver. The soundness of this doctrine will stand up against any test.

The appellant has cited many cases in support of his contention that the Bankruptcy Court had power over the State Court Receiver even before the amendments to the Bankruptcy Act. He has also cited some cases decided after Sections 2a21 and 69d were enacted which he claims likewise establish such power in the Bankruptcy Court, either because such power always existed or because such power derives from the new statutory provisions.

An analysis of each case cited by the appellant demonstrates that in no instance has any court been unfaithful to the doctrine that supersession is a prerequisite to jurisdiction over the State Court officer. A brief reference to some of the cases will show that this is true.

In *Taylor v. Sternberg*, 293 U. S. 470, Sutherland, J., points out very clearly that the State Court was superseded by the Bankruptcy Court. The Receiver had been appointed in a state insolvency proceeding. Pages 472-473:

> "In the present case, with the supervening bankruptcy, the possession of the State Court came to an end, and that of the Bankruptcy Court immediately

attached. This result was binding upon the State Court and equally binding upon the Receiver as custodian for that court. Before the petition in bankruptcy was filed the Receiver's compensation, as well as that of his counsel, were matters wholly within the control of the State Court, but with the filing of the petition in bankruptcy the power of the State Court in that respect ceased; and its order fixing the compensation of the Receiver and its counsel was a nullity because made without jurisdiction, such jurisdiction having passed to the Bankruptcy Court."

In *In re Diamond's Estate*, 259 Fed. 70, the Receiver was appointed in a partnership dissolution proceeding. The partnership was insolvent at the time the State Receiver was appointed. The adjudication of bankruptcy gave the Federal Court jurisdiction of the partnership property; the bankruptcy proceeding superseded the winding up of the partnership in the State Court. The State Court recognized such supersession and directed its Receiver to turn over the property to the Receiver in bankruptcy.

In *Lyon Bonding and Surety Co.* v. *Karatz*, 262 U. S. 640, Brandeis, J., says, at page 642:

> "Even where the court which appoints a Receiver had jurisdiction at the time but loses it, as upon supervening bankruptcy, the first court cannot thereafter make an allowance for his expenses and compensation. He must apply to the Bankruptcy Court."

In re Gross v. *Irving Trust Co.*, 289 U. S. 342, the Receivers were appointed by the Court of Chancery of New Jersey. The bankruptcy superseded the State Court proceeding and it was because of such supersession that the State Court lost its power to fix the compensation of its Receivers and to direct payment thereof out of the bankrupt estate.

In *State of Missouri* v. *Angle* (*In re Sage*), 236 N. Y. 644, the bankrupt Sage was a private banker. A State Court Receiver of the bankrupt was appointed. It was

held that the bank was the property of the bankrupt and the State liquidation proceeding in which the Receiver had been appointed was superseded by the bankruptcy.

In the cases of *In re Central Forging Co.*, 31 Fed. Supp. 1020, and *In re 188 West Randolph Street Building Corp.*, 88 Fed. (2d) 257, the bankruptcy superseded the State Court proceeding for in each of those cases the State Court Receiver surrendered possession of the property to the trustee in bankruptcy.

In *Matter of Park Beach Hotel Building Corp.*, 96 Fed. (2d) 886, there was clearly supersession. In that case as well as in *In Re Central Forging Co.* and *In re 188 West Randolph Street Building Corp.* (supra) the petition was for reorganization, not an ordinary bankruptcy petition. Upon the filing of the petition in each of these cases the foreclosure Receiver surrendered possession of the property to the trustee. There can be no question of conflicting jurisdiction between the Bankruptcy Court and the State Court in these cases for it is recognized that in this type of proceeding the taking of jurisdiction by the Bankruptcy Court terminates the jurisdiction of the State Court.

POINT II.

The provisions of the Bankruptcy Act, Sections 2a21 and 69d, have no application to a Receiver not displaced or superseded by the bankruptcy.

We consider now the statutes themselves, their wording, history and purpose. Section 2 is a jurisdictional section. It contains the grant of power under which the bankruptcy courts act. Under the 21st subsection of subdivision (a) the bankruptcy courts are invested with jurisdiction to require receivers or trustees in proceedings not under this Act to turn over property in their hands to the bankruptcy receiver or trustee, and to account to the bankruptcy court. This section contains no mandate to the State Court Re-

ceiver. He is not obliged to move under it unless the Bankruptcy Court "requires" him to do so.

Section 69d makes a receiver or trustee not appointed under the Bankruptcy Act "accountable to the Bankruptcy Court, in which the proceeding under this Act is pending, for any action taken by him subsequent to the filing of such bankruptcy petition * * *" and directs him to file a sworn schedule of the property in his hands and a sworn statement of the administration of the estate.

We believe that these sections were intended to apply only to those cases where the bankruptcy proceeding supercedes the other proceeding with the result that the bankruptcy receiver or trustee displaces the previous receiver or trustee. The history and purpose of the statutory amendments support this view and the language used is entirely in harmony with such interpretation.

It appears from the report of the House Committee on the Judiciary (Report No. 1409, 75th Congress, First Session) that the purpose of the amendment was to increase efficiency in the administration of bankrupt estates. In the words of the prevailing opinion below "the section merely grants a new remedy and was not intended to enlarge the jurisdiction of the Bankruptcy Court" (R. 20). The following quotations from the report of the House Committee on the Judiciary indicate the evils, to remedy which the sections were enacted.

The report says of Section 2a21:

> "This clause is entirely new and gives to Bankruptcy Courts the much needed power to regulate the administration of equity receiverships, assignments for benefit of creditors and the like, supervened by bankruptcy proceedings within the four months period. The courts have held that trustees in bankruptcy are relegated to a plenary suit as to all disbursements made prior to the filing of the petition in bankruptcy, and that has resulted in long delay and considerable unnecessary expense. There is no logical reason why the Bankruptcy Court could not supervise these ex-

penditures *since all of the previous proceedings are nullified by the petition in bankruptcy followed by an adjudication.*" (Italics supplied.)

Clearly the House Committee was thinking in terms of Receivers in proceedings which are superseded by bankruptcy. The quoted language stresses the nullification of previous proceedings and the inference seems justified that, if the converse were true, i.e., that the State Court retained jurisdiction and the previous proceedings continued, concurrently with the bankruptcy, then the State Court should keep control of its Receiver.

The House Committee report says of Section 69d:

> "The new provision is designed to make it possible for equity receivers, where there is a supervening bankruptcy proceeding, to know just how to proceed with further administration during the period intervening between the filing of the involuntary petition in bankruptcy and the adjudication without danger to themselves and the equity estate. It is manifestly in the interest of efficiency in the conservation of assets."

Here again the Committee speaks of "equity receivers" and "supervening" bankruptcy. We believe that in using the word "supervening" the Committee really meant "superseding". The entire language is postulated upon supersession. No violence would be done to the object and purpose of Section 69d, as stated by the Committee, if a State Court were permitted to keep control of its Receiver in a foreclosure action of which it retains jurisdiction.

We know that "equity receivers" do not include foreclosure Receivers of the rents and profits. This Court has so decided in *Duparquet, Huot & Moneuse Co.* v. *Evans*, 297 U. S. 216. That case is especially helpful in pointing the way to a proper interpretation of the statutes now under consideration. In that case the question was whether

a receivership for the collection of rents and profits in a suit for the foreclosure of a mortgage is an "equity receivership" within the meaning of Section 77b of the Bankruptcy Act. In deciding that question the Court stated that the purpose of Section 77b, in the light of the history of the evils which it was intended to correct, should be taken into consideration in construing the language used. Judge Cardozo, writing for a unanimous court, held that the expression "equity receivership" as used in Section 77b was not intended to include Receivers of the rents and profits in foreclosure suits. He stated (pp. 219-224):

> "The remedy to be supplanted or more efficiently controlled had no relation to receiverships for the collection of rents and profits in actions of foreclosure. The remedy in view was the one generally known as an 'equity receivership' whereby the assets of a corporation were committed to the custody of a court until the time should arrive when they could be returned to the rehabilitated debtor, or if that should be impossible, divided among creditors. * * *
>
> However colloquial and uncertain the words had been in the beginning, they had won for themselves finally an acceptance and a definiteness that made them fit to play a part in the legislative process. They came into the statute through an amendment proposed when the bill which was adopted as 77b was passing through the Senate. * * * They came through freighted with the meaning imparted to them by the mischief to be remedied by the contemporaneous discussion. * * * In such conditions history is a teacher that is not to be ignored.
>
> Passing from the setting of the statute to a view of its internal structure we are brought to the same conclusion, but with added firmness of conviction. A receivership in a foreclosure suit is limited and special. The rents and profits are impounded for the benefit of a particular mortgagee, to be applied upon the debt in the event of a deficiency. (Freedman Savings and Trust Company v. Shephard, 127 U. S. 494, 32 L. ed. 163, 8 S. Ct. 1250; W. B. Worthen Co. v. Cavanough, 295 U. S. 56, 62, 79 L. ed. 1298, 1302; 55 S. Ct. 555; 97 Elr. 905; Sullivan v. Rosson, 223 N. Y.

217; 119 N. E 405; 4 Elr. 1400.) The corporation retains its other property, if it has any, unaffected in its power of disposition by the decree of sequestration. The creditors retain their remedies except against the income subjected to the lien. There is neither winding up of the business nor attempt to reorganize it and set it going anew. This is not the equity receivership of which the law makers were thinking if context and analogy have capacity to deliver up a lesson.

* * * It is common learning that an equity receiver in suits to conserve the assets or divide them among creditors must yield to a trustee in bankruptcy (citing authorities). On the other hand it is also common learning that not even a trustee in bankruptcy may override a valid mortgage lien or supersede a receiver who has been put into possession in fulfillment of the mortgage contract (citing Stratton v. New, supra, and other authorities). Section 77b does not make these precedents inapposite. True the suit for the foreclosure of a mortgage may be stayed or enjoined upon the showing of necessity (sec. 77b (c) (10)); the lien may be transferred to the proceeds of a sale (77b); at times the holder of the lien may have his security modified or reduced by the plan of reorganization when finally approved (77b (b) (e) (f) (h)) (citing authorities). Nowhere does the statute say, however, that those results or any of them shall follow automatically upon the approval of the petition as properly filed (sec. 77b (a)). Only by excluding a receiver in foreclosure from the scope of subdivision i can we avoid anomalous encroachments upon vested rights and interests.

Such a reading of the act will help at the same time in the avoidance of other consequences too harsh or incongruous to have been intended by the Congress. The statute speaks (77b (i)) of a receiver 'of all or any part of the property of a corporation'. These words will have a proper office if the receivership is understood to be a general one for liquidation or for cognate purposes. They will take care of a situation where only part of the property is within the jurisdiction so that not even an 'equity receivership' will be competent always, without ancillary orders, to give possession of the whole. But the situation is very different if the receivership in

view is one for the foreclosure of a mortgage. In its normal operation such a receivership does not connote possession of all of the property of the debtor, or even all the property within the appointing jurisdiction. The mortgage may be a lien upon one parcel, or a few, leaving other property of abundant value for payment of the debts. Indeed the cases must be many where the owner of a mortgaged building, not personally liable for the payment of the mortgage debt will hold it the part of prudence, whether he is solvent or insolvent, to let the building go. True indeed it is that in this case it so happens that the property subject to the mortgage is everything the debtor has. All that is but an accident which has little, if any, bearing upon the meaning of the act. True, it is also, that a court receiving a petition for reorganization in invitum may approve or disapprove it, and that any hardship growing out of the extreme or unusual situation may thereby be averted. Even so, the search at the moment is for a definition of an equity receivership that will tend to minimize anomalies and give consistency and coherence to the statutory rule. There is little persuasion in an argument that in despite of all anomalies, the system, if it is well administered, may manage to survive."

While the question before the Court in the *Duparquet* case was whether a foreclosure receivership is an "equity receivership" as that term was used in Section 77b, we submit that the rationale of the opinion applies with equal force to the statutory amendments now under consideration. While the Congress speaks of "receivers" and "trustees" in Sections 2a21 and 69d rather than "equity receivers", the report of the House Judiciary Committee indicates that it meant "equity receivers" and other officers comparable thereto. The opinion certainly is authority for our position that the words "receivers" and "trustees" can be given a limited interpretation so as to give full effect to the statutory amendments in every case where the Bankruptcy Court acquires exclusive jurisdiction and yet leave undisturbed the principle, so well established as to be called "common learning" by Justice Cardozo, that a

trustee in bankruptcy does not supersede a receiver in foreclosure where the jurisdiction to continue the foreclosure is undisturbed.

In the language of the majority opinion in the Court below (R. 19, 20):

> "It would be altogether anomalous to divorce from the land itself the income which accrues pendente lite. Indeed, when a court takes possession of mortgaged land by its receiver, it in effect merely anticipates its final action, acting in harmony with the general axiom that equity regards as done what ought to be done; if all the necessary steps could be taken together in pie-powder fashion, the property would be sold, the buyer would begin to receive the rents at once, and the mortgagee the interest upon the purchase price. The receivership is the nearest substitute; the rents are security just as the land is security from the time when the court intervenes; they become part of the mortgaged res because only so can the mortgagee be protected during the inevitable delay. For this reason it is extremely unlikely that when Congress left to the state courts jurisdiction over the land it should have intended to separate the rents. Indeed, the receiver is as much an arm of the court as the master whom it appoints to conduct the sale; it is as unwarranted an invasion of its power to compel the receiver to account as to compel the master. *Either the bankruptcy should supersede the whole suit, as it does in the case of a winding up, or it should not touch it at all; the tail goes with the hide.*" (Italics supplied.)

To sustain the contention of the appellant is to assert the unheard of doctrine that upon the filing of a petition in bankruptcy, there is effected a severance of the rents from the real estate, the State Court losing control of the rents to the Bankruptcy Court while retaining control of the real estate. The majority opinion observes that insofar as "straight bankruptcy" is concerned this would be a "revolutionary change" (R. 22).

The rents in the hands of the Receiver never came into the possession, actual or constructive, of the Bankruptcy

Court. Whatever title the trustee in bankruptcy acquired to either the rents or the real estate was subject to the ultimate outcome of the foreclosure proceeding with which the property was burdened at the time the petition was filed. Since the bankruptcy did not supersede that foreclosure proceeding, the property and its income remained in the custody of the State Court until completion of the foreclosure. Moreover, the trustee had to await the outcome of the State Court proceeding in order to determine whether the entire value of the property was required to satisfy the debt which it secured or whether there would be a surplus over and above the amount required to satisfy the debt. Until the surplus was determined, there was nothing which the bankruptcy trustee could claim. When it developed that there would be a surplus of rents in the hands of the Receiver the trustee was only one adverse claimant to such surplus. These rents were part of the res over which the State Court acquired prior jurisdiction and that Court had the exclusive power to settle any controversies with relation thereto.

The receivership covered two periods, one from August 17, 1940, to February 21, 1941, during which the trustee was the owner of the equity of redemption and hence entitled to the net rents, if any; the other, from February 21, 1941, until the termination of the receivership during which Apartment Investing Corporation was the owner of the equity of redemption, and in this period the trustee had no claim to the net rents. It was for the State Court to decide what portion, if any, of the surplus in the Receiver's hands, was the property of the trustee in bankruptcy. Until such determination there was no res to which bankruptcy jurisdiction could attach.

We have looked in vain in the dissenting opinion below for any substantial objection to the interpretation for which we contend. Reference is there made to the objection that the lien being enforced in the State Court may be invalid (R. 27). If that be so, the validity of the lien may be contested in bankruptcy and such contest would

furnish the basis for enjoining the State Court, at least until the validity of the lien was determined. In other words, supersession is possible in such a case and where the action is superseded, so is the Receiver. Reference is also made to a doubt entertained by the dissenting Judge based on *Stratton* v. *New* (supra) and *Isaacs* v. *Hobbs Tie & Timber Co.*, 242 U. S. 734. He says that it is not at all settled that the Bankruptcy Court's power of inhibiting foreclosure begun after bankruptcy cannot be extended back four months; that in *Stratton* v. *New* it was "held that where a receiver had been in possession more than four months before the bankruptcy, he could not be displaced. Thus the Supreme Court left undecided the status within four months" (R. 27).

We do not so read *Stratton* v. *New* and we believe the dissenting Judge has misconstrued the decision. In *Stratton* v. *New* the lien which was sought to be enforced in the State Court was a judgment lien and in order for it to have validity as against a subsequent bankruptcy it must have been procured more than four months prior to the filing of the bankruptcy petition. As we read the opinion of Justice Roberts, it stands for the proposition that if a State Court took jurisdiction of an action to foreclose a valid lien, even one day before the filing of the petition in bankruptcy, such foreclosure action should not be enjoined by the Bankruptcy Court. However, if the basis of the asserted lien is a judgment, the lien would not have validity unless the judgment was procured prior to the four months' period.

The real basis for the dissent is found in the following language of Judge Clark (R. 28):

> "If the cost of a foreclosure receivership were borne by the mortgagee and the equity fully turned over to the bankruptcy court, I would not be quite so solicitous of the bankruptcy power."

Apparently the real evil in the mind of the dissenting Judge was the control by the State Court of the cost of the

receivership. It was, in our opinion, because of this statement that the prevailing opinion spoke of the amendments, as construed in the dissent, as being "quite needless and galling to the State Courts' dignity". The majority of the Court were not merely being "epithetical". Nor were they being unduly indulgent of the feelings of the State Courts in the face of a proper exercise of bankruptcy jurisdiction. They were, in truth, recognizing that the only discernible reason for construing the statutory amendments as contended for by the appellant and the dissenting Judge, is seeming lack of confidence in the ability and willingness of the State Courts to exercise a proper restraint in passing on the allowances of the Receiver and his counsel. Such a view is clearly an affront to the dignity of the State Courts and in the case at bar, quite needless as well. We can understand how it would be galling to say to a State Court that it may retain jurisdiction to foreclose a lien, notwithstanding bankruptcy, but it cannot be trusted with the purely administrative problem of providing reasonable compensation to its own officer and his counsel.

POINT III

The Bankruptcy Court had power to assent to the settlement of the Receiver's accounts by the State Court.

The appellant takes the position that, if Sections 2a21 and 69d be construed as applicable to a Receiver of the rents and profits in a State foreclosure proceeding relating to a specific parcel of real estate owned by the bankrupt, then the order appealed from is erroneous and should be reversed.

The case presents no such clear-cut issue. Even if the appellant's construction of the statutory provisions be upheld, the order of the Court below affirming the order of the District Court should not be reversed. That order

of the District Court was not SOLELY predicated upon the inapplicability of the two statutory provisions to foreclosure Receivers of rents and profits. It was predicated rather upon the exercise of the discretion of the Bankruptcy Court in giving its consent and approval to the exercise of jurisdiction by the State Court and to the determination made by that Court after a full hearing on the merits in that Court.

In this view of the case, the legal interpretation of Sections 2a21 and 69d is academic so far as the order of the District Court is concerned. That order cannot be reversed except on a finding that the District Court abused its discretion in consenting to the exercise of jurisdiction by the State Court and acquiescing in the determination of that Court.

The District Court did not immediately act on the petitioner's application to compel the Receiver to account in the Bankruptcy Court. The motion was made on August 15, 1941. The District Judge, at the time of argument, stated that he was inclined to permit the State Court to retain jurisdiction (R. 12). The motion was decided February 10, 1942 (R. 16). In the meantime the accounting proceeding was fully tried and determined in the State Court and an order was made settling the account on December 3, 1941 (R. 13). Thereafter the District Judge asked for further affidavits (R. 9, 13). From these affidavits he concluded: "It is evident that the issues raised by the trustee were fully tried and a determination was made on the merits" (R. 14).

The District Court then assented to the determination of the State Court in the following language (fols. 55-56):

> "Considering the two sections of the Bankruptcy Act cited by the trustee, it appears that in the event that this court granted the trustee's motion, the receiver's accounting would be filed and the same objections would be interposed by the trustee. This would afford him two trials of the same issues already de-

termined in the Supreme Court of the State of New York. A fair interpretation of the Bankruptcy Act leads to the conclusion that it was not intended to give two trials of the same issues. As was said In Re National Motorship Corp. (96 Fed. (2) 88) '* * * state court's disposition was subject to assent of the Bankruptcy Court' indicating that full faith and credit can therefore be given by this court to the determination of the Supreme Court of the State of New York."

The District Court plainly predicated its decision upon the assumption that, if it had the legal power, under the statutory provisions relied on, to direct the Receiver to account in the Bankruptcy Court, it would withhold the exercise thereof, being satisfied that, in accord with applicable law of New York State, the proceedings in the State Court were proper and that the rights of those interested in the bankrupt estate had been safeguarded and protected. Under this decision the petitioner cannot be heard to complain that the Court misconstrued the statute. His only ground for a reversal would be a possible abuse of discretion by the District Judge. The petitioner makes no such claim.

The right of the Bankruptcy Court to consent to the exercise of jurisdiction by the State Court is well established.

Stratton v. *New*, 283 U. S. 318;
Isaacs v. *Hobbs Tie & Timber Co.*, 282 U. S. 734;
In re National Motorship Corp., 96 Fed. (2d) 88;
In re American Fidelity Corp., Ltd., 28 Fed. Supp. 462;
In re Canyon Pipe Line Co., 39 Fed. Supp. 233;
Wells v. *California Tomato Juice, Inc.* (D. C. of Appeals, 3rd D. Cal., 1941), 118 Fed. (2d) 916.

Even where the petition in bankruptcy antedates the foreclosure, and the jurisdiction of the Bankruptcy Court is clearly paramount (*Isaacs* v. *Hobbs Tie & Timber Co.*, supra), it has become frequent practice for mortgagees of

real property, upon the happening of a default, to apply to the Bankruptcy Court for leave to institute foreclosure proceedings in the State Court. Such applications are granted with great frequency, the Court generally requiring a further application to be made for consent of the Bankruptcy Court to the entry of judgment of foreclosure and sale in the State Court. In this way the Bankruptcy Court does permit the exercise of jurisdiction in the Courts of the State and at the same time retains sufficient control to prevent the entry of judgment if the circumstances should require that the entry of judgment be withheld.

The District Court in this case was content to limit its exercise of jurisdiction to the SUPERVISION of the settlement of the account by the State Court. In so doing the Court was fortified by ample precedent and it cannot be said that the objectives sought to be attained by the statutory amendments were not achieved.

It is not the spirit or the policy of the bankrupcty statute or the 1938 amendments thereto to proscribe completely the exercise of any jurisdiction by a State Court. The recent decision of this Court in *Marine Harbor Properties, Inc.* v. *Manufacturers Trust Company*, 63 S. Ct. Rep. 93, supports the view that a State Court, having acquired prior jurisdiction, should not be precluded from protecting the rights of senior creditors where it is not shown that the continued exercise of such State Court jurisdiction would prejudice other interested parties. It affirmatively appears from the record in the instant case that the District Court was completely satisfied that the judicial settlement of the Receiver's accounts in the State Court did substantial justice to those interested in the bankrupt estate (R. 14, 15). The Circuit Court, in affirming the order of the District Court, likewise held that the Bankruptcy Court did not have *exclusive* jurisdiction over the foreclosure Receiver's accounts. For, in stating the problem presented on appeal, that Court said:

"The outcome of the appeal turns on whether Section 2 (a) (21) and Section 69 (d) of the Bankruptcy Act, which were added in 1938, gave *exclusive* jurisdiction to the Bankruptcy Court over the accounts of a receiver in foreclosure." (Italics ours.)

The disposition of the trustee's motion by the District Court, affirmed by the Court below, as a proper exercise of the legal discretion of the Bankruptcy Court, was clearly justified by the facts presented in this record. The minority opinion in the Court below, arguing for exclusive jurisdiction in the Bankruptcy Court over the foreclosure Receiver's accounts as mandatory under Section 69d, is largely predicated upon "public policy", the opinion referring to "a cutting down of exorbitant expenses of foreclosure" and to the claim that "the Bankrupcty Court is now held to have no control over his (the receiver's) disbursements, and powerless to prevent him from paying himself and his attorney very well and leaving only a deficit for the estate" (R. 28, 29).

There is no basis in the law nor in the facts contained in this record for such assertions. The minority opinion completely ignores what was so plainly pointed out in the majority opinion, namely, that even if the District Judge directed the Receiver to repeat his accounting in the Bankruptcy Court, the result would have been precisely the same. This is so because in the Bankruptcy Court the law of New York State with respect to the settlement of a foreclosure Receiver's accounts would be applied because the State law governs (Opinion below, citing *In re Humeston*, 83 Fed. [2d] 187, C. C. A. 2).

The decision of the District Judge, affirmed by the Circuit Court, was good common sense as well as good law. He merely decided to accept the Receiver's account as judicially settled by the State Court in accordance with the law of New York. It appeared to him on the face of the record that the substantive, as well as the procedural, law of New York had been fully complied with. There was

no point, therefore, in compelling a needless repetition of the account in the Bankruptcy Court where the same law of New York would again be followed.

The law of New York governing the instant situation has been referred to in part by the Court below in these words:

> "As soon as the receiver qualified, all the rents were sequestered for the benefit of the third mortgagee. That is the law of the state (*Sullivan* v. *Rosson*, 223 N. Y. 217) and the state law governs."

The Real Property Law of New York governs the construction of statutory clauses and covenants contained in mortgages and bonds. *Inter alia*, the statute provides that:

> "A covenant 'that the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver', must be construed as meaning that the mortgagee, * * * in any action to foreclose the mortgage, shall be entitled, without notice and without regard to adequacy of any security of the debt, to the appointment of a receiver of the rents and profits of the premises covered by the mortgage; and the rents and profits in the event of any default or defaults in paying the principal, interest, taxes, water rents, assessments or premiums of insurance, are assigned to the holder of the mortgage as further security for the payment of the indebtedness" (Sec. 254, subd. 10).

Although the owner of the equity of the real property being foreclosed does retain the naked legal title to the rents, the rents belong in equity to the holder of the mortgage by virtue of the assignment "as further security for the payment of the indebtedness". The rents, therefore, in the hands of the Receiver, are just as much subject to the equitable lien of the mortgagee, and subject to his equitable rights and remedies, as is the land being foreclosed (Idem, Sec. 60); *Van Rensselaer* v. *Read*, 26 N. Y. 558).

With this background, we deem it pertinent to briefly outline other phases of the law of New York State touching this

case, which the District Court had the right to judicially notice and to apply in deciding the motion.

A Receiver in New York is a public officer (N. Y. Public Officers Law, Sec. 28). His duties are prescribed by statute and he is compelled to furnish a bond (N. Y. Rules of Civil Practice, Rule 175 et seq.; Civil Practice Act, Art. 60, Secs. 974-977b). Pursuant to the laws of New York, the Receiver in this case was allowed only the usual statutory commissions, nothing more. The Receiver collected rents totalling $30,533.05. The commissions allowed him amounted to $1,526.65 (R. 7). This amounts to exactly 5% upon the sums received and disbursed by him as allowed by law (N. Y. Civil Practice Act, Secs. 1547, 1547a).

A foreclosure Receiver in New York is compelled by law to keep an accurate, detailed written account, which is open to inspection by any person whose rights are affected by the litigation (N. Y. Rule of Civil Practice 181). Under the rules of the State Court which had jurisdiction of the foreclosure in which this Receiver was appointed, he was bound to make deposits in a depository designated by the Court and permitted to make no withdrawals except as directed by the Court on checks signed by the Receiver and countersigned by the official surety on his bond (Rule 13, Rules N. Y. Supreme Court, Nassau County).

The Receiver's account was rendered and judicially settled in accordance with the law of New York. The procedure regulating the disposition of moneys held by the Receiver has been embodied in statute (N. Y. Civil Practice Act, Secs. 1083, 1083a; *Bedcro Realty Corp.* v. *Title Guarantee & Trust Co.*, 37 N. Y. S. [2d] 529).

The District Court properly relied upon the presumption that the judicial acts of the State Court were regular and according to law. The trustee completely failed to sustain his burden of producing evidence to the contrary (*United States* v. *Chemical Foundation, Inc.*, 272 U. S. 1).

CONCLUSION

The order of the Circuit Court of Appeals for the Second Circuit affirming the order of the District Court should be affirmed with costs.

Dated, Brooklyn, New York, February 10, 1943.

JOHN P. McGRATH,
Attorney for Appellee.

DENIS M. HURLEY,
with him on the Brief.

SUPREME COURT OF THE UNITED STATES.

No. 551.—October Term, 1942.

Allan D. Emil, As Trustee in Bankruptcy of John M. Russell, Inc., Petitioner,
vs.
Harry Hanley, Receiver.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[March 15, 1943.]

Mr. Justice Douglas delivered the opinion of the Court.

John M. Russell, Inc., was the owner of an apartment house in New York. On August 13, 1940, a foreclosure suit by a third mortgagee was filed. On August 17, 1940, the state court appointed respondent receiver of the rents and profits of the apartment house. On August 31, 1940, an involuntary petition in bankruptcy was filed against John M. Russell, Inc. of which petitioner was subsequently appointed as trustee. Respondent collected the rents from the premises from the time of his appointment in August, 1940 to and including August, 1941. While that foreclosure suit was pending, mechanics liens, subordinate to the third mortgage, were foreclosed, a sale was had, and the property purchased by Apartment Investing Corporation. That was in February, 1941. Judgment in the mortgage foreclosure suit was entered in June, 1941, and on August 13, 1941, before the sale was held, the judgment was paid and satisfied by Apartment Investing Corporation. Thereafter, respondent presented his accounts to the state court for settlement. Petitioner applied to the bankruptcy court for an order directing respondent to file his account in that court. While that motion was pending, the motion in the state court came on for a hearing. Petitioner appeared and filed his objections to respondent's accounts. His objections were overruled,[1] the accounts approved, and respondent discharged by

[1] The court holding that all rights of the bankrupt in the real property were cut off February 24, 1941; that on that day there was a deficit in the receiver's account; and that the balance of rents had accrued subsequent to February 24, 1941.

the state court. Thereafter the bankruptcy court denied petitioner's motion. 43 Fed. Supp. 128. The Circuit Court of Appeals affirmed by a divided vote. 130 F. 2d 369. We granted the petition for a writ of certiorari because of the importance of the problem in the administration of the Bankruptcy Act.

Petitioner contends that § 2(a)(21) and § 69d make it obligatory on the respondent as a non-bankruptcy receiver to account to the bankruptcy court. These provisions of the Bankruptcy Act are new. They were added in 1938 by the Chandler Act. 52 Stat. 840, 11 U. S. C. § 11(a)(21), § 109d. Sec. 2(a)(21) gives to the bankruptcy court the power in straight bankruptcy proceedings to require "receivers or trustees appointed in proceedings not under this Act" within four months of bankruptcy (1) "to deliver the property in their possession or under their control to the receiver or trustee appointed under this Act", and (2) "to account to the court for the disposition by them of the property" of the bankrupt.[2] Sec. 69d makes a "receiver or trustee, not appointed under this Act, of any of the property" of the bankrupt "accountable" to the bankruptcy court for "any action taken by him subsequent to the filing of such bankruptcy petition."[3] These

[2] Sec. 2(a)(21) sets forth as one of the enumerated powers of courts of bankruptcy, the power to: "Require receivers or trustees appointed in proceedings not under this Act, assignees for the benefit of creditors, and agents authorized to take possession of or to liquidate a person's property to deliver the property in their possession or under their control to the receiver or trustee appointed under this Act or, where an arrangement or a plan under this Act has been confirmed and such property has not prior thereto been delivered to a receiver or trustee appointed under this Act, to deliver such property to the debtor or other person entitled to such property according to the provisions of the arrangement or plan, and in all such cases to account to the court for the disposition by them of the property of such bankrupt or debtor: *Provided, however*, That such delivery and accounting shall not be required, except in proceedings under chapters X and XII of this Act, if the receiver or trustee was appointed, the assignment was made, or the agent was authorized more than four months prior to the date of bankruptcy. Upon such accounting, the court shall reexamine and determine the propriety and reasonableness of all disbursements made out of such property by such receiver, trustee, assignee, or agent, either to himself or to others, for services and expenses under such receivership, trusteeship, assignment, or agency, and shall, unless such disbursements have been approved, upon notice to creditors and other parties in interest, by a court of competent jurisdiction prior to the proceeding under this Act, surcharge such receiver, trustee, assignee, or agent the amount of any disbursement determined by the court to have been improper or excessive."

[3] Sec. 69d provides: "Upon the filing of a petition under this Act, a receiver or trustee, not appointed under this Act, of any of the property of a bankrupt shall be accountable to the bankruptcy court, in which the proceeding under this Act is pending, for any action taken by him subsequent to the filing of such bankruptcy petition, and shall file in such bankruptcy court a

sections are in part declaratory of the law as it existed prior to the Chandler Act. Thus § 2(a)(21) plainly includes the case where a lien against the debtor's property was acquired by some legal or equitable proceeding within four months of bankruptcy. Prior to 1938 such liens did not survive bankruptcy (*Straton* v. *New*, 283 U. S. 318, 322); and bankruptcy superseded the proceedings out of which they arose. Remington, Bankruptcy (4th ed.) § 2067-§ 2071. But the accountability of the non-bankruptcy receiver or trustee presented some difficulties prior to the Chandler Act. When bankruptcy superseded the prior proceedings, all disbursements subsequent thereto were, of course, subject to the exclusive control of the bankruptcy court. *In re Diamond's Estate*, 259 Fed. 70; *Moore* v. *Scott*, 55 F. 2d 863; *Lion Bonding & Surety Co.* v. *Karatz*, 262 U. S. 640, 642; *Gross* v. *Irving Trust Co.*, 289 U. S. 342. While such disbursements were generally subject to the summary power of the bankruptcy court (*Taylor* v. *Sternberg*, 293 U. S. 470), an accounting for disbursements made prior to bankruptcy required a plenary suit. *Loveless* v. *Southern Grocer Co.*, 159 Fed. 415; 1 Collier, Bankruptcy (14th ed.) pp. 320-321. And see *Galbraith* v. *Vallely*, 256 U. S. 46; *In re Jack Stolkin, Inc.*, 42 F. 2d 829. Sec. 2(a)(21) by substituting a summary proceeding was designed to eliminate the delay and cost of a plenary suit and to provide a more effective control over prior disbursements. See H. Rep. No. 1409, 75th Cong., 1st Sess., p. 20; Weinstein, The Bankruptcy Law of 1938, pp. 16-17.

Does § 2(a)(21) go further and apply to a case where a receiver is appointed within four months of bankruptcy as an incident to enforcement of a mortgage lien whose validity is not challenged? Prior to the Chandler Act such proceedings were not superseded by bankruptcy. They survived bankruptcy, the interest of the estate in them being protected by the intervention of the bankruptcy trustee. *Straton* v. *New*, *supra*, pp. 326-327, and cases cited. Under the earlier Act it made no difference whether such a proceeding was instituted prior to or within the four months period. Where the lien survived bankruptcy, prior

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sworn schedule setting forth a summary of the property in his charge and of the liabilities of the estate, both as of the time of an, since his appointment, and a sworn statement of his administration of the estate. Such receiver or trustee, with knowledge of the filing of such bankruptcy proceeding, shall not make any disbursements or take any action in the administration of such property without first obtaining authorization therefor from the bankruptcy court."

proceedings to enforce it would not be enjoined by the bankruptcy court. 1 Collier, *op. cit.*, pp. 306-309; *Straton* v. *New*, *supra*, p. 326, nt. 6. Sec. 2(a)(21) read literally would call for a different result in that foreclosure receivers would have to turn over to the bankruptcy court all the property in their possession or under their control, and account to it. In this case, since the receiver was only a receiver for rents and profits it would mean that the foreclosure would go on apace in the state court while the funds collected by the receiver would be turned over to the bankruptcy court for administration. The argument advanced in support of that view is that with such power the bankruptcy court could better protect the interests of the estate in the foreclosure proceeding.

But we do not think that that was part of the purpose of § 2(a)(21). As we have stated, the main purpose of § 2(a)(21) was to give the bankruptcy court control over disbursements made in non-bankruptcy proceedings prior to the filing of the petition. The House Judiciary Committee in its report stated: "There is no logical reason why the bankruptcy court could not supervise these expenditures, since all of the previous proceedings are nullified by the petition in bankruptcy followed by an adjudication. The principle is the same as that involved in section 60d of the act where it is provided that fees paid to the attorney for the debtor prior to bankruptcy and in contemplation thereof are subject to review by the bankruptcy court." H. Rep. No. 1409, *supra*, p. 20. That is as plain an indication as could be made that § 2(a)(21) was designed to define the powers of the bankruptcy court only where bankruptcy superseded the prior proceedings.[4] The language of § 2(a)(21) squares with that express declaration. When Congress wrote the four months proviso into § 2(a)(21) it was not writing on a clean slate. The presence of that proviso suggests the type of problem with which Congress was dealing. *Straton* v. *New*, *supra*, indicates the importance of that period in a determination of what liens did not survive bankruptcy and when bankruptcy proceedings superseded prior proceedings. The 1938 Act, like its predecessor, makes the four month period part of the critical test for determining what liens do not survive bankruptcy. One example is to be found in

[4] We do not, of course, include that supersession which flows from the fact that state insolvency laws are involved which are "tantamount to bankruptcy." Straton v. New, *supra*, p. 327.

§67a(1) which provides that liens "obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months"[3] of bankruptcy are null and void on certain conditions. That section illustrates the relevancy of the four month period to this type of problem. If § 2(a)(21) is read to extend the power of the bankruptcy court to the present situation,[5] the four month period will have acquired a new significance in bankruptcy law. We cannot help but think that if Congress had set out to make such a major change, some clear and unambiguous indication of that purpose would appear. But we can find none. Moreover, such an interpretation would lead in many cases to a division of authority between state and federal courts. Thus in this case the state court would remain in charge of the foreclosure; the bankruptcy court would have exclusive control over the receiver's receipts. An interpretation which leads to a division of authority so fraught with conflict will not be readily implied.

It is argued, however, that the provision in § 2(a)(21) concerning proceedings under chapters X and XII indicates a purpose to include the type of receiver we have here. It seems clear that such a foreclosure receiver is included within § 2(a)(21) where proceedings under Ch. X have supervened. But the fact that a foreclosure receiver is included for one purpose does not necessarily mean that he is included for another. Plans of reorganization under Ch. X may (§ 216) and commonly do affect the rights of mortgagees. Hence § 148 provides that an order approving a petition under Ch. X operates to stay a pending mortgage foreclosure or other proceeding to enforce a lien against the debtor's property.[6] And § 256 and § 257 provide that the trustee (or debtor) acquires all rights in, and the right to immediate possession of, the property of the debtor under the control of a receiver or trustee appointed in a prior proceeding in any federal or state court. That is to say, a Ch. X proceeding supersedes a

[5] We do not reach the question, reserved in Duparquet H & M Co. v. Evans, 297 U. S. 216, 224, whether the appointment of a foreclosure receiver might be an act of bankruptcy under § 3(a)(5). See In re 211 East Delaware Place Bldg. Corp., 14 F. Supp. 96. It was suggested in Randolph v. Scruggs, 190 U. S. 533, 536, that bankruptcy superseded a general assignment for the benefit of creditors made within the four month period since the making of the assignment was an act of bankruptcy. And see Remington, *op. cit.*, § 2971.

[6] And unlike proceedings under § 77B (Duparquet H & M Co. v. Evans, 297 U. S. 216), a mortgage foreclosure is adequate under certain conditions for a creditor's petition under Ch. X. § 131(4).

pending mortgage foreclosure. We thus find § 2(a)(21) performing the same function when applied to Ch. X proceedings[7] as it does when applied to ordinary bankruptcy. We conclude that the Circuit Court of Appeals was correct in reading the word "receivers" distributively. Such a construction fits the statutory scheme as a whole. The other interpretation results in a distortion which the language of § 2(a)(21) makes unnecessary and which its history does not warrant.

Little need be said about § 69d. It must be read in connection with § 2(a)(21). The legislative history suggests that it, too, was designed to apply only where bankruptcy superseded the prior proceedings. H. Rep. No. 1409, *supra*, p. 12. As stated by the draftsman, "It makes clear and certain the exclusive and paramount jurisdiction of the bankruptcy court over property dealt with in a prior equity receivership or like proceeding which is superseded by a bankruptcy proceeding." Weinstein, *op. cit.*, p. 154. And see 4 Collier, *op. cit.*, pp. 879-882.

Affirmed.

Mr. Justice RUTLEDGE did not participate in the consideration or decision of this case.

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[7] Similar considerations are applicable to real property arrangements under Ch. XII. Secs. 406(1), 411, 416, 428.